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**Globalization and interdependence: role of the
United Nations in promoting development in the
context of globalization and interdependence**

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Report of the Secretary-General

Summary

Over the past few decades, globalization has often been identified with opportunities for growth, innovation and business transformation. There were and still remain, however, serious imbalances in the distribution of its benefits, as well as its costs and adverse consequences. The food, fuel and climate change crises, along with the current financial and economic crisis exacerbate these inequities and jeopardize development gains. The poorest and most vulnerable populations of developing countries in particular are bearing the brunt of these crises, leading many to question globalization itself.

The current economic crisis is increasingly being seen as a crisis of globalization, and especially of financial globalization. Commodity prices and trade and investment flows have already declined as a result of the ongoing global financial and economic crisis. If aid flows also decline, the impact will be even more devastating for low-income countries and the poor.

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Nevertheless, the crisis also provides a rare opportunity for the international community to guide the world economy onto a path of sustainable economic growth and recovery by more effectively addressing the problems of food insecurity and climate change. This goal can be achieved through greater multilateralism and the equitable participation of all countries, both developed and developing. At a time when resources are scarce, innovative approaches to financing are needed to address the challenges of poverty reduction and sustainable economic development. These new methods need to be developed in a spirit of partnership, cooperation and solidarity, bearing in mind common interests and the national priorities of each country. As the main institution of inclusive multilateralism, the United Nations can play an important role in facilitating such efforts.

I. Introduction

1. As requested by the General Assembly in its resolution 63/222, the present report addresses the role of the United Nations in poverty reduction and sustainable development, and presents an analysis of this issue in the context of the current global financial and economic crisis. It also provides an overview of the international economic and policy challenges for achieving equitable and inclusive sustained economic growth and sustainable development, and of the role of the United Nations in addressing these issues, as requested by the Assembly in its resolution 63/224.

2. Over the past decade or more globalization has often been associated with opportunities for growth, innovation, and business transformation. Characterized by the integration of economies in terms of not only goods, services and financial flows, but also ideas, information and technology, globalization has created unprecedented benefits, and adverse consequences, for many developing countries. The continuing challenge is to realize its potential benefits while minimizing the considerable risks and vulnerabilities that have been created in its wake. In the context of the current environment, beset by multiple crises (food, energy, climate change and financial), the challenge seems daunting.

3. Critics of globalization argue that it is the cause of the current financial collapse, growing inequality, unsustainable urbanization and development, unfair trade and insecurity. Its proponents, however, say that globalization is the solution to today's crises. In any case, it is clear that the new patterns of interdependence that lie at the core of globalization are here to stay. Some of the key drivers of globalization, trade and investment, have undoubtedly been negatively affected by the crisis. It is reassuring that Governments are developing effective responses and building political consensus at home to implement domestic measures to restore financial stability and stem rising unemployment. However, those who have benefited least from globalization are likely to bear the brunt of the crisis. Therefore, measures are needed to minimize its impact, especially on the most vulnerable. The current economic crisis is increasingly seen as a crisis of financial globalization, with serious repercussions on the recovery and future prosperity of the world economy. The crisis challenges advocates of globalization to show its positive impact on development.

4. The crisis has made it all too clear that globalization of trade and finance calls for global cooperation and well-coordinated regulatory measures. Moreover, unfettered markets and unregulated capital flows are not beneficial to developed countries. But resolving this and other multiple crises and avoiding similar events in the future has implications beyond the realm of banking and financial regulation, and goes to the heart of the question of how to revive and extend multilateralism in a globalizing world. In that regard, the United Nations must play a central role. With this in mind, the United Nations system agreed on a joint initiative in nine key areas: additional financing for the most vulnerable; food security; trade; a green economy initiative; a global jobs pact; social protection floors; humanitarian action, security and social stability; technology and innovation; and monitoring and analysis. This common commitment is designed to assist countries and the global community to confront the crises, accelerate recovery and build a fair and inclusive system of globalization based on sustainable economic, social and environmental development for all. Ultimately, national ownership of such initiatives is critical. It

is only through a strong political will and commitment that the international community can set the global economy on a path of sustainable economic recovery.

5. Section II of the present report highlights the main facets of globalization during the current economic crisis. Section III addresses the main challenges for poverty reduction in the context of the crises, while section IV highlights the need for the international community to shift towards sustainable development as part of efforts to urgently address the current challenges.

II. Globalization during the current economic crisis

6. The global economic crisis is currently placing strains on the global trade and investment system. Trade and international investment did not cause the current crisis and cannot alone bring about economic recovery, but they are crucial for long-term sustainable development.

7. Trade has generated gains for many developing countries and the adverse effects of collapsing trade volumes on growth, employment and social welfare show both its importance and vulnerability in the current crisis. Estimates show that global trade is likely to fall by at least 9 to 10 per cent this year. For developing economies as a whole, and small and low-income developing countries in particular, this could be potentially disastrous as exports account for more than 50 per cent of their gross domestic product (GDP).

8. Developing countries will be disproportionately affected because of falling demand for both their commodities and their finished goods, negative commodity price trends and the inaccessibility and costs of trade financing. Export earnings and Government revenues will likely continue to be depressed in many countries, while remittances from wealthy countries are likely to shrink. Only some of the larger emerging economies may be in a position to insulate themselves from declining trade, owing to the size of their internal markets and their policies on capital accounts and banking regulation, which have thus far kept growth relatively buoyant. Therefore, recent developments put at risk the very benefits that trade has generated as an engine of growth.

9. The situation is further exacerbated by an increase in protectionist measures, which are likely to trigger reactions and risk causing a downward spiral of protectionist retaliation. For example, based on data from the World Trade Organization, the Economic and Social Commission for Asia and the Pacific estimates that a total of 62 trade measures were enacted by its member States between October 2008 and June 2009, of which 42 were restrictive and 20 were liberalizing measures. This trend is visible in both developed and developing countries. The latter are expected to suffer more from any surge in protectionism, because their exports are often particularly sensitive to protectionist actions and they generally lack the necessary safety nets to help those affected. The most recent report of the World Trade Organization on measures taken by its members indicate some further slippages towards more trade-restrictive actions, although more adverse protectionist measures have been contained thus far. Despite continued calls by the world's leading economies to avoid protectionism, there is no clear indication that Governments will unwind or remove recent protectionist measures.

10. The current rise in protectionism will deepen the crisis, impede global economic recovery and could severely affect future economic growth in developing countries. In addition, a surge in trade protectionism, especially in the form of increased non-tariff barriers, could take a very long time to dismantle and adversely affect world trade for years to come. The current economic crisis calls for globally and regionally coordinated policy responses. Declarations against protectionism have already been made by many countries, yet new protectionist measures continue to be adopted.
11. Thus, the recent commitment of the Group of Eight to conclude the Doha Round by the end of 2010 can be seen as a welcome indication of the growing resistance to protectionism and as a reiteration of the importance of multilaterally agreed trade rules and disciplines. Existing rules already recognize legitimate trade measures and actions; further strengthening those rules and placing development at their centre could be one of the most important collective actions Governments can take. An ambitious, balanced and development-oriented conclusion to the Doha Round ensures that the global trading system will remain open to support the development efforts of all countries. Agreement on a truly developmental Doha Round can help safeguard the multilateral trading system against protectionist impulses.
12. The effects of the crisis on the availability of liquidity and the subsequent supply of trade credit are well known. Banks and other credit providers are unable to supply sufficient credit at affordable rates that traders need. Many developing and least developed economies need aid for trade in order to remain competitive and to use trade as a tool for poverty reduction. More importantly, predictable, sustainable and non-debt-creating financing is needed. Since 2005, aid for trade has grown by 10 per cent a year, bringing total new commitments to more than \$25 billion in 2007. Non-concessional aid from international financial institutions adds another \$27 billion, more than doubling the 2007 figure. Recipients of aid for trade have clearly indicated that it is one of the most important multilateral instruments for helping developing countries to weather the crisis and emerge in a better position to take full advantage of trading opportunities.
13. There is, therefore, a clear need to build upon the progress made in aid for trade. In addition, despite current conditions, the international community should deliver on its commitments to increase technical, financial and political support for aid for trade and the enhanced integrated framework for least developed countries to help strengthen the trading and production capacities of developing countries. With aid for trade and a truly developmental Doha Round, the international community can count on having two effective, global tools to combat the negative effects of the crisis. Both stem from mutual interests and cooperation and provide a further opportunity to reinvigorate multilateral cooperation.
14. A rapid reversal of capital flows, together with the rising costs of borrowing and asset price deflation, has already struck some emerging markets, particularly those still holding large stocks of external debt, and is driving some to borrow again from international financial institutions. The United Nations Conference on Trade and Development (UNCTAD) estimates that the global economic turmoil has put an end to a four-year growth cycle in international investment flows: recent data show that foreign direct investment inflows fell by 54 per cent in the first quarter of 2009.

15. Moreover, the flow of worker remittances, an increasingly important source of foreign exchange for some countries, is expected to decline as employment prospects falter in the more advanced economies. Newly available data show that remittance flows to developing countries reached \$328 billion in 2008. The World Bank estimates that remittance flows to developing countries could decline by 7 to 10 per cent in 2009, with a possible recovery in 2010 and 2011.¹ Remittances are relatively resilient, however, while new migration flows have declined, the number of migrants living overseas has been relatively unaffected by the crisis. Moreover, migrants tend to remit more funds to support the families they leave behind in times of hardship. In other words, remittances generally have been found to be countercyclical, for example during the Asian crises in 1997 and 1998. But when migrants themselves lose their jobs in a global recession, remittances cannot be expected to play quite the same countercyclical role. Furthermore, there is a risk that aid commitments to the poorest countries will be curtailed in the wake of the slowdown and the consequent fiscal responses in donor countries. This would be devastating for most developing countries, in particular the least developed countries, landlocked developing countries and small island developing States.

16. Warning signs of the limits to globalization's developmental impact were evident even before the breakdown in credit flows and liquidity following the outbreak of the current crisis. Due attention should be paid to two key deficiencies of globalization in its current form: the inequitable distribution of its benefits and the lack of effective global governance. While its benefits have no doubt accrued to the few rather than to the vast majority, globalization, if better managed, may benefit the majority of the world's population and eradicate poverty. The crisis does not negate the potential benefits of globalization itself; rather, it presents the international community with an opportunity to orient the world towards a globally integrated economy that operates in a more equitable and resilient manner. This objective can be accomplished through greater multilateralism and cooperation among all countries.

III. Poverty reduction in the context of crises

17. The social effects of the crisis, which are already disturbing, could worsen. With falling capital flows and declining trade, the negative impact on growth could reverse the progress made thus far, especially in developing countries. If urgent action is not taken, this situation could become devastating for the most vulnerable and voiceless, and lead to growing social insecurity and the displacement of people. The timely achievement of the Millennium Development Goals is at stake. In this regard, it is crucial that efforts be focused on ensuring productive and decent work for all and universal social protection against economic insecurity and vulnerability, especially among the poorest and the most vulnerable, and on overcoming challenges to food security and strengthening agriculture devoted to food production.

¹ World Bank, Development Prospects Group, Migration and Remittances Team, *Migration and Development Brief 10* (July 2009).

A. Full and productive employment and decent work for all

18. Paid employment may be the best route out of poverty. Yet employment is quickly becoming one of the main casualties of the crisis, given the global slowdown in investment, production, trade and other employment-intensive sectors, such as tourism. Faltering employment is becoming a major channel through which the crisis is being transmitted to households. Unemployment has risen rapidly since 2008 and is expected to worsen in 2009 and 2010. According to initial projections, some 50 million people will lose their jobs over the next two years, but as the situation continues to deteriorate, this number could easily double.² Moreover, the current crisis is expected to have a more negative impact on unemployment rates for women than on those for men in most regions of the world, particularly in Latin America and the Caribbean.³

19. The recent turmoil has presented a new set of challenges to most regions of the world by making it increasingly difficult to achieve progress towards more sustainable and socially equitable growth and decent work for all. Government spending is the most effective way to boost employment, production and aggregate demand in times of crisis. Some Governments have already begun to implement countercyclical fiscal measures, in the form of fiscal stimulus packages, which should be sufficiently large, targeted, sustained and coordinated. For instance, Government investment should: (a) first be targeted at employment-intensive areas, including infrastructure and services projects; and (b) actively support the integration of the jobless into the labour market through employment subsidies, job search assistance and training. Countries with less capacity, however, face more constraints in adopting countercyclical measures. Most developing countries have less fiscal space and as a result, external assistance becomes especially crucial for them.

20. The promotion of small and medium-sized enterprises in both developed and developing countries can help to generate employment and boost wealth creation. In addition to being a major driver of economic growth and job creation, a diversified range of such enterprises can build resilience in communities and economies through their ability to respond rapidly to changing opportunities in local, regional and global markets. Financial institutions must be encouraged and supported in efforts to refocus their lending to entrepreneurs on new productive and innovative undertakings, in particular through small and medium-sized enterprises. Coordinated global policy options are needed to strengthen national and international efforts to create jobs and ensure sustainable enterprises and quality public services. Global coordination can be attained through the United Nations Global Jobs Pact, which includes the Decent Work Agenda of the International Labour Organization (ILO).

B. Protecting the poorest and the most vulnerable

21. Markets cannot exclusively be relied on to provide livelihood security. The insecurities generated by global competition, outsourcing, labour casualization, weakened job protection and recurring financial crises have given rise to strong

² United Nations, *World Economic Situation and Prospects 2009: update as of mid-2009*.

³ International Labour Organization, *Global Employment Trends for Women* (March 2009).

demands for State support for universal social protection. Social safety nets and social protection systems must complement active efforts to create productive and gainful employment. In times of recession, Governments often reduce spending on social services, in particular in the health and education sectors, which not only curbs progress towards achieving the Millennium Development Goals, but also plants the seeds of poverty for future generations, particularly if spending on child priorities is reduced.

22. Universal social protection schemes are increasingly viewed as an investment in human resources with the potential to promote growth and improve long-term poverty reduction rather than as a set of expensive, targeted interventions that create dependency. Evidence has shown that such measures can reduce economic insecurity and vulnerability, enhance household capacity to acquire food, improve child nutrition, use health services and keep children in school. The current crisis, as well as the recent food and energy crises, highlight the need to develop universal social protection schemes to enable the poor and the vulnerable to better weather macro- and micro-level shocks.

23. Most developing countries do not have social protection systems in place, however. Recent research surveying 144 developing countries showed that 19 of 49 low-income countries and 49 of 95 middle-income countries do not have established social safety net programmes, and only about one third of all countries surveyed had some form of cash transfer programme. The scarcity of well-designed basic social security packages for workers in the developing world is of particular concern, as some structures in the public sector are extremely weak.

24. In this regard, the international community could, for instance, promote and support the development of a social protection floor to protect people during and after crises. A social protection floor could consist of two main elements:

(a) *Essential services* to ensure the availability and continuity of public services (such as water and sanitation, health care, education and family-focused social support), and access to such services; and

(b) *Social transfers* to establish a basic set of essential social transfers, in cash and in kind, for the poor and the vulnerable, to enhance food security and nutrition and provide nutritional support for pregnant and lactating women; public food distribution systems for the poor and the vulnerable; subsidies for the types of grains and bread consumed by low-income populations; fee waivers; food-for-work programmes; and the provision of minimum income security and access to essential services, including education and health care.

25. At the country level, efforts to establish a social protection floor may also require the development of policies, based on key principles such as non-discrimination, gender equity and public participation, to uphold and protect the rights of those likely to be affected.

26. Social safety nets must ensure coverage for the most vulnerable groups, such as poor populations living in remote areas, migrants, workers in the informal economy, the working poor, children, women, youth and the elderly. During previous financial crises, declining Government spending on education and health care transferred the burden of service provision to households and communities, thus adding to the already heavy demands being made on women. Policy responses, therefore, must be focused on protecting women and girls in particular. Similarly,

children in general should also be given due attention. Evidence from previous crises shows that child mortality rates rose, school enrolment dropped and children were forced into dangerous work environments. Also, reductions in health care and education caused children and their families to fall into poverty. By maintaining critical services for children and focusing on the nutritional security of poor families, countries can limit the damage wrought by the current crisis and protect their most vulnerable citizens.

27. The impact of the current economic and financial crisis is multidimensional and the capacity of countries to respond differs greatly. Past crises, such as those involving food and fuel, have revealed a serious information gap between the point when vulnerable populations feel the impact of a crisis and when decision makers have access to reliable data to inform the difficult policy choices they must make. In responding to calls for the United Nations to assist in filling this gap, the Secretary-General has brought the United Nations system together to establish a lightly structured and flexible monitoring system, the Global Impact and Vulnerability Alert System, which can track in real time changes in vulnerability across multiple dimensions and help Member States mitigate the consequences of external shocks on their most vulnerable citizens.

C. Overcoming food insecurity and strengthening the agricultural sector

28. Progress made in reducing poverty and hunger in developing countries is being set back. The number of people already suffering from chronic hunger has increased from 850 million in 2006 to around 1 billion in 2009.⁴ In many countries, the middle class is being weakened. Vulnerable groups, such as children, women, youth, the elderly, migrants and people with disabilities, are hit the hardest. Yet, the current crisis also provides an opportunity for decision makers to design alternative solutions to overcome world hunger and achieve food security. Since three quarters of the world's poor depend directly or indirectly on agriculture (as small farmers, artisans, small entrepreneurs and rural workers), special attention should be paid to broad-based rural development. Although world food prices have fallen from their recent record highs, they remain elevated in many developing countries, where there is increasing evidence that the poor are adopting damaging coping strategies, which in turn affect the quality and quantity of food consumed, with attendant increases in malnutrition. Such adverse impacts affect long-term human development and tend to be disproportionately concentrated among women, children and other vulnerable groups.

29. If both the objectives of alleviating poverty and achieving food security are to be attained, policymakers will need firstly to invest heavily in agricultural and rural infrastructures, new irrigation techniques, best practices for land and water utilization and the revitalization of agricultural service institutions. Secondly, they will need to recognize the close linkage between food and fuel markets and policies, in terms of not only the cost of inputs for food production and transport, but also the impact of biofuel policy on the net availability of food. Thirdly, there is a continued need to invest in agriculture and develop sustainable rural livelihoods, which have

⁴ Food and Agriculture Organization, *The State of Agricultural Commodity Markets 2009: High food prices and the food crisis – experiences and lessons learned* (Rome, 2009).

been declining in policy importance for decades. Lastly, the long-term challenge of ensuring food security is not only a matter of lowering prices and increasing supply, but also fundamentally linked to the quest to increase purchasing power and reduce poverty.

30. Hence, beyond the immediate objective of providing humanitarian relief in the countries most ill-equipped to weather the present crisis, national policymakers and the international community must critically address the broader and long-term challenge of reducing poverty and hunger. These issues highlight the need for better coordination across global, regional and national development partners. The Secretary-General's High-level Task Force on the Global Food Security Crisis and the Millennium Development Goal Africa Steering Group, for example, have framed a consensus among leading development agencies on the concrete actions needed to achieve food security and the Millennium Development Goals. In particular, the Task Force has set out seven areas for action to ensure food security:

- (a) Food assistance, including safety nets;
- (b) Nutrition programmes for children, mothers and vulnerable populations, including ready-to-use therapeutic foods, maternal nutrition, exclusive breastfeeding and food fortification;
- (c) Social protection systems for vulnerable populations;
- (d) Smallholder farmer food productivity, with a primary focus on women farmers, including through measures to increase access to land, credit and agricultural extension services, improve irrigation and rural infrastructure, develop risk-hedging mechanisms and increase agricultural diversification;
- (e) Agricultural sector development; infrastructure and trade and tax policies;
- (f) Information and management systems;
- (g) Advocacy for sufficient, sustained and predictable funding and sustained investments.

31. Under the Comprehensive Framework for Action set up by the High-level Task Force on the Global Food Security Crisis, an estimated additional \$25 to \$40 billion will have to be invested annually for food and nutrition security, social protection, agricultural and infrastructure development and the improved functioning of food markets. These important investments, combined with improved terms of trade for agricultural products, could provide the necessary incentives and help poor farmers to boost production and supply. For investments in agriculture to be fully realized, the public sector must play the leading role in ensuring the provision of adequate and appropriate agricultural infrastructure, rural credit, research, extension and even marketing services, in exceptional cases. In addition, Governments and the international community must support research and development in agriculture and extension services.

32. Private investment in agriculture requires accompanying public investment. For example, by integrating a fertile region, a public road makes private investments in that region more profitable. However, the growing level of private sector involvement in agricultural research and development in developed nations and the increasingly proprietary and competitive research environment have been driven by

the introduction of intellectual property rights protection for plant varieties and biotechnology products. Further, public-sector research expenditure has dropped considerably in both developed and developing countries, as has external assistance to agriculture, including official development assistance. In addition, a substantial amount of agricultural research and development may become less relevant to the requirements of developing countries and more geared towards the concerns of consumers in developed countries, such as food safety and environmental issues.

33. International research priorities need to be revisited, and participatory approaches to research, involving national, regional and international research institutions, as well as the private sector and farmers themselves, should be implemented. The rules that govern intellectual property may also need to be revised to improve equity, benefit the primary conservators of genetic resources and holders of traditional knowledge and encourage scientists to share their inventions for the public good. Differentiated rules for intellectual property rights may be needed within the World Trade Organization, at least in the short to medium term, to allow developing countries to establish the legal infrastructure needed to implement well-functioning intellectual property rights systems, and to ensure that developing countries have affordable access to new technology.

34. Despite the significant scientific and technological progress made in the ability to increase agricultural productivity, less attention has been paid to some of the unintended social and environmental consequences of the achievements. Successfully meeting development and sustainability goals will require a fundamental shift in science, technology, policies, institutions, capacity development and investment relating to agriculture. Increased attention should be directed to approaches for maintaining and restoring soil fertility and ensuring sustainable production through practices such as low-input, resource-conserving technologies. These technologies minimize the need for high levels of inputs and are socially appropriate approaches to small-scale agriculture. Organic agricultural systems, for example, are making a significant contribution to the reduction of food insecurity and poverty in some areas of Africa, and to improvements in rural livelihoods.⁵ There is the potential to accomplish more in this area with enabling policy and institutional support, which calls for a shift of emphasis in research and science budgets, and for the creation of better linkages among scientists, farmers and agricultural training and extension providers.

IV. Sustainable development in the context of crises

35. The interrelated challenges presented by the food, fuel and economic crises are further complicated by the vagaries of climate change. Climate change is expected to exacerbate food insecurity and the fuel crisis, and will most adversely affect the poor. Even as global demand for natural resources continues to rise, climate change will impose new constraints on the availability of water and land, affecting agricultural productivity, fisheries and forestry, as well as the livelihoods of those dependent on them, while adding to upward pressure on food and natural resource prices.

⁵ United Nations Environment Programme-United Nations Conference on Trade and Development Capacity-building Task Force on Trade, Environment and Development, *Organic Agriculture and Food Security in Africa*, 2008.

36. Simultaneously, rapid urbanization has resulted in unplanned and unsustainable human settlements with changing lifestyles. Moreover, the global economy has adopted growth patterns that are driving our consumption of materials and energy beyond the limits of what is available on this planet. Many enterprises use more materials and energy than their production processes require. They continue to use obsolete, inefficient technologies and fail to adopt proper environmental management systems. This is especially true of small and medium-sized enterprises and industry in developing countries. These challenges will compromise the ability of developing countries to achieve the Millennium Development Goals.

A. Climate Change

37. Addressing the climate change crisis while being mindful of the need for sustainable development and poverty eradication is crucial. This can be accomplished through the long-term management of economic and natural resources in a more inclusive and sustainable manner. Moreover, large and long-term investments will play a pivotal role in enabling economies at all levels of development to switch to low-emission, high-growth pathways. The current financial crisis provides an opportunity to fundamentally change patterns of economic development, investment and production, and international cooperation. Efforts should be made to identify new, sustainable development trajectories based on low-carbon, clean technologies with a large component of renewable energy sources. A shared vision, based on one of the essential principles of the United Nations Framework Convention on Climate Change — common but differentiated responsibilities and respective capabilities — must be the basis of any outcome reached at the United Nations Climate Change Conference in Copenhagen. Negotiating parties must show a clear and strong commitment to the overall objective of sustainable development and also address equity considerations, such as poverty reduction, and reach convergence in terms of income distribution and per capita emissions. Reaching a deal in Copenhagen will require not only political engagement at the highest level, but also public involvement from around the globe. Public support must be galvanized to ensure effective implementation of the agreed outcomes at all levels. To this end, the Secretary-General has demonstrated strong leadership by mobilizing the United Nations system to create a new global climate change advocacy and communications campaign in the run-up to Copenhagen. Having identified climate change as a defining issue of our time and recognizing the importance of political leadership at the highest level to ensure a fair, balanced and effective climate change agreement in Copenhagen, the Secretary-General has decided to host a Summit on Climate Change for Heads of State and Government on 22 September 2009. By convening this Summit, the Secretary-General expects that world leaders will seek to give political impetus and direction to the climate change negotiations by urging Heads of States and Government to commit to sealing a deal in Copenhagen.

38. Mitigating greenhouse gas emissions will require large and interconnected investments across several sectors, with the aim of halting deforestation and land degradation, retrofitting buildings to make them more energy efficient and redesigning transportation systems; but an alternative integrated strategy for meeting climate change and development goals will require an energy transition.

The ultimate goal of such a transition must be to improve energy efficiency and reduce reliance on fossil fuels, especially oil and coal, and to increase reliance on renewable sources of energy, especially wind and solar power, and advanced (non-food) biofuels.

39. Developed countries have mature economies in which there is adequate (and even excessive) availability of modern energy services. They do not need to massively expand their energy infrastructure. However, lifestyle changes and sizeable investments will still be needed to turn their energy system away from its current dependence on fossil fuels and towards a complete decarbonization by the end of the century or earlier. Conversely, developing countries, are severely handicapped in terms of their insufficiently modern energy infrastructures and will require sustained large-scale investments in this sector to meet existing demand and promote economic development. Meeting these needs will require a major transformation in their economies and massive technology and financial transfers from developed countries.

40. Progress towards emission reductions has been disappointing, as developed countries have not complied with their mitigation targets, as agreed in the Kyoto Protocol. Developing countries will also need to limit the growth of their emissions in the future. The fact that many developing countries have already started doing so is encouraging. An investment "push" is needed to foster economic growth and obtain domestic resources in developing countries. In order to enhance predictability, funding must not be voluntary but be tied to agreed long-term commitments based on, for example, pro rata mechanisms (such as levied percentages of financial flows and mandatory contributions in relation to GDP). Wider-ranging options, which include taxes on capital flows, international transport, energy use or emissions, or on volumes of transactions in carbon markets, as well as permit-auctioning and other measures can generate considerable additional annual flows in the tens of billions of dollars.

41. Even if policymakers can quickly effect the transition to a low-emissions growth path, the unavoidable consequences of climate change, such as rising global temperatures, will generate serious environmental shocks and stresses through spreading drought conditions, rising sea levels, melting ice sheets and snow cover, and the occurrence of extreme weather events. In the coming decades, these phenomena will threaten and destroy livelihoods around the globe, in particular those of already vulnerable populations, including in developed countries. Adapting to climate change must be the central component of any comprehensive policy response to climate change.

42. The threats posed by climate change are particularly common in rural communities, where more than one third of the world's households will be forced to confront the precariousness of their livelihoods. In this context, it is critical to enable vulnerable people to protect existing livelihood systems, diversify their sources of income, change their livelihood strategies or migrate, if this is the best option. Policies that can support vulnerable populations include: changing consumption patterns and food preparation practices; improving agricultural water management; promoting sustainable livestock management; practising conservation agriculture, applying new technologies and changing planting or sowing schedules; extending support services, particularly to smallholders; improving infrastructure

(such as roads, storage facilities and irrigation networks); and promoting agro-biodiversity.

43. Forests are a source of livelihood for close to 25 per cent of the world population, many of whom are threatened by climate change. Measures to help forests adapt to climate change include facilitating the adaptive capacity of tree species, mainly by maximizing silvicultural genetic variation, and adopting management approaches such as reduced-impact logging. More generally, investments in economic diversification and job creation, as well as improvements to land, soil and water management, will be part of a more integrated strategy.

44. A new, scientifically credible and forward-looking climate agreement would provide certainty and continuity to the carbon markets and send a clear signal that renewable energy will become an increasingly important component of the overall energy mix and a major contributor to the sustainable development agenda, including achieving the poverty-related Millennium Development Goals.

45. Some developing countries have begun to develop alternative policy frameworks through, for example, national adaptation plans. These have focused on climate-proofing infrastructure projects, such as transport and irrigation systems, enhancing disaster monitoring and management and improving land-use planning. However, difficulties in scaling up projects owing to funding and institutional shortcomings, as well as the failure to adopt a broader developmental approach, still need to be overcome. Moreover, achieving lasting success will be contingent on adopting effective development policies that more closely link adaptation to ongoing efforts to remove the existing vulnerabilities and constraints on growth and development.

46. For many developing countries, however, the core of adaptation is still closely tied to the need to diversify their economies and move beyond their reliance on a small number of activities, specifically those in the primary sector, which are sensitive to climatic shocks and changes. The Government of Mozambique, for example, has drawn up ambitious plans for the sustainable development of the coastal region, including infrastructure (transportation, drainage and water supply), land use changes and soft options to manage beach erosion. Such plans, which present unique opportunities for an infusion of massive development projects, need to address climate risks in an integrated manner, across seasonal, inter-annual and multi-decadal time scales.

47. The development of new low-emissions technologies will respond to supply-push (such as targeted cheap credit) and demand-pull (such as a policy-induced price of carbon) factors. The import of such technologies holds out the possibility of more vigorous improvements in energy efficiency, expanded shares of renewable energies, more natural gas and less coal and early deployment of carbon capture and storage. Investment in the sustainable energy market has in some ways defied the global recession, growing by around 5 per cent, from \$148 billion in 2007 to around \$155 billion globally in 2008. In particular, investment in new energy generation projects (wind, solar, biofuels, etc.) grew by 13 per cent during 2008, to \$117 billion. While this increase is welcome, a further scale-up of societal commitments to a more sustainable, low-carbon energy paradigm is essential. Moreover, redirecting fossil fuel subsidies to clean energy sources would boost the transition to low-emissions high growth.

48. Such transformational changes in the energy system require support from research and development, the removal of trade barriers and effective capacity-building. Centres for low-emissions technology innovation could play an important role. The combination of basic research, field trials, business incubator services, venture capital funding, technical advice and support, and policy and market analysis adopted will also be contingent on local conditions and challenges. In some cases, regional initiatives may be the best way to benefit from economies of scale and scope.

49. In the short and medium term, however, mitigating and adapting to climate change increase the cost of development. Perhaps as much as \$40 billion may be needed to make existing investments climate-proof, and the figure for ensuring resilience in the face of future developments will be much larger. United Nations Development Programme estimates suggest that this would require \$86 billion annually (by 2016) and failure to act quickly on mitigation will only add to that figure. Investment in mitigation to meet stabilization targets will be of a much higher order.

50. Financing these investments will be among the big constraints on the shift to low-emissions economies in most developing countries, particularly where domestic markets for low-emissions technologies are small. Developed countries must provide sufficient, predictable, secure and accessible financing, share technology and build capacity to support and enable the mitigation and adaptation efforts of developing countries.

B. A Global Sustainable New Deal

51. While most attention is focused on climate change, the sustainability of economic growth and development is also threatened by the loss of forests and biodiversity, air and water pollution and degradation. A Global Sustainable New Deal could seek to establish a new public policy agenda aimed at placing countries on a different developmental pathway — one that protects the natural resource base in an equitable manner without compromising job creation and catch-up growth. Such a goal can be achieved only if Governments of rich and poor countries alike come together in collaborative initiatives. Such initiatives could be pursued, in part, by using the resources mobilized through the stimulus packages of developed countries. A reform of the multilateral financial and trading systems will also be needed over the medium term to support a more stable global economy and promote investment-led growth in a low-emissions economy. Over the longer term, that growth will be sustainable only if developing countries are able to mobilize sufficient domestic resources. Developing countries must also be able to acquire new technologies at an affordable price.

52. An investment of 1 per cent of global GDP (approximately \$750 billion, or one fourth of the total size of proposed fiscal stimulus packages) over the next two years could provide the critical mass of infrastructure needed to seed a significant greening of the global economy.⁶ In major economies, fiscal stimulus packages should give priority to investments in sustainable transport, efficient energy,

⁶ United Nations Environment Programme, *Global Green New Deal — A Policy Brief*, March 2009.

renewable energy, afforestation and reforestation, sustainable agriculture and biodiversity protection. It is critical for developing countries to prepare fiscal stimulus packages as well. Investments in basic infrastructure can pave the way for sustainable growth and must be targeted at poor and vulnerable groups and regions. Many less developed countries will have to rely on foreign aid and support, both financial and non-financial (access to technology, for example), to set the stage for the development of sustainable economies.

53. The Green Economy Initiative launched by the United Nations responds to the prevailing development challenges and imbalances in growth strategies by motivating policymakers in all countries to give green investments sufficient space in their countercyclical policies. The three main objectives of the Initiative are to:

(a) Make a major contribution to reviving the world economy, saving and creating jobs and protecting vulnerable groups;

(b) Promote sustainable and inclusive growth and the achievement of the Millennium Development Goals, especially ending extreme poverty by 2015;

(c) Reduce carbon dependency and ecosystem degradation.

54. The Green Economy Initiative will identify the trade-offs between green investments and business-as-usual scenarios, and suggest policy changes to support green investments. In the case of very poor economies, the Initiative will provide the means of understanding how green investments at the lowest economic scale can contribute to poverty reduction and identifying policy changes that can maximize both sustainability and poverty-reduction impacts. A sustainable economy should be accompanied by new skills training targeted at the poor as a means of further stimulating the economic, social and environmental dimensions.

55. In order for the combined challenges of development and climate change to be met, nothing less than a fundamental transformation as regards financial and technological support to developing countries is needed. Such a transformation would involve moving beyond the long-standing promises of such support from developed countries to a full-fledged strategy detailing how they will support the investments that developing countries would have to make to shift quickly to a low-emissions, high-growth path. A new focus on development is needed and the regime and governance mechanisms need to build appropriate linkages and processes around sustainable development at the international level, forged on inherent trust among developed and developing countries to ensure sustainable development.

I. New funding mechanisms

56. The current investments in the global energy system are estimated at some \$500 billion per year. The sustainable scenario would require at least double this amount during the coming decades — about \$1 trillion per year or \$20 trillion by 2030. Financing the various challenges may therefore warrant making more radical changes in the existing international architecture. Some possible measures include:

(a) *A global feed-in tariff regime.* Such a regime could provide guaranteed purchase prices to producers of renewable energy in developing countries over the next two decades;

(b) *A reformed Clean Development Mechanism.* Much attention has focused on reforming the Mechanism in such a way as to replace its project focus with a programmatic and/or policy focus, in the expectation of larger impacts, shorter funding cycles and lower transaction costs;

(c) *Forest-related financing mechanisms.* Several new financing initiatives have been launched to help reduce emissions from deforestation and forest degradation, including the World Bank Forest Carbon Partnership Facility and the United Nations Collaborative Programme on Reducing Emissions from Deforestation and Forest Degradation in Developing Countries (UN-REDD Programme).

2. Technology transfer

57. Developing countries will need support in building their own technological capacity so as to ensure that they undergo a smooth transition to a low-emissions economy and maintain competitiveness in an open global economy. The supporting architecture could focus on:

(a) *A climate technology programme.* An operational programme, supported by a Secretariat and various panels of experts, needs to be established, possibly under the auspices of the Conference of the Parties to the United Nations Framework Convention on Climate Change to examine the various dimensions of the technology challenge in developing countries and, where appropriate, to provide technical assistance with respect to, inter alia, energy efficiency in buildings; greening industrial supply chains; deployment and maintenance of renewable energy infrastructure; integrated waste management; water and sanitation; and extension services to promote sustainable agriculture;

(b) *A global research, development and deployment fund.* In the world today, barely \$2 per person per year is invested in energy-related research, development and deployment activities. This amount needs to increase substantially to enable the transition towards new and advanced technologies in energy systems;

(c) *A balanced intellectual property regime for technology transfer.* The parties to the United Nations Framework Convention on Climate Change need to agree on the role of intellectual property in technology transfer. The flexibilities available within the framework of the Agreement on Trade-related Aspects of Intellectual Property Rights, such as compulsory licences, exceptions to patent rights, regulating voluntary licences and strict application of patentability criteria, are limited to specific circumstances and are usually more difficult to operationalize in developing countries. Options such as allowing developing countries to exclude critical sectors from patenting, as well as a global technology pool for climate change, merit serious consideration. In addition, modalities for access to publicly funded technologies by developing-country firms need to be explored.

3. Trade

58. As Governments are becoming serious about addressing climate change, the old trade and environment debates on how to distinguish between legitimate environmental and health protection measures as allowed under the rules of the World Trade Organization and disguised trade protectionism measures need to be revived. Because subsidies are and will continue to be used to support the

development of alternative energies, the issue of determining how to handle those subsidies and which ones are non-actionable under the rules of the World Trade Organization will also have to be addressed.

V. Recommendations

59. The current crisis is affecting all countries, both developed and developing, and has a serious and disproportionate impact on the poorest and most vulnerable. The very drivers of globalization, trade and capital flows, as well as knowledge and technology, have enabled the high rates of growth and development witnessed in many developing countries. For most of them, however, the global economic crisis threatens this progress.

60. Globalization must not be rejected, but rather better understood and managed for the benefit of developing countries. Evidence suggests that crises can also provide opportunities to ensure more equitable and sustainable development. This requires (a) global solutions that include developing countries in global decision-making processes, and (b) integrating the social and environmental dimensions into the economic and financial system. These challenges need to be addressed through a more inclusive multilateralism that delivers for developing and developed countries alike, while recognizing the special vulnerability of the poor.

61. The United Nations plays an essential role in helping to manage the various ramifications of the crises. It can ensure dialogue and enable a coordinated response based on an inclusive decision-making process. It also has the capacity to provide impartial analysis and pragmatic policy recommendations in this area.

62. In its responses to the crisis, the developed world must consider the impact of these responses on developing countries. Developing countries, for their part, need to implement policies that enable them to make their economies more robust. More importantly, countries are the main actors and the international community must offer its unwavering support through:

(a) Productive and timely decisions to reduce the asymmetries between developed and developing countries in undertaking necessary countercyclical policies and providing additional social protection;

(b) Improved policy coherence at global, regional and national levels is crucial. Stakeholders need to build on the current momentum of intensified multilateral cooperation to promote a fully inclusive framework of global governance;

(c) Strengthened capacity of Governments to design, finance and implement the right policies, while coordinating them with international partners. The multilateral system plays a central role in articulating and delivering a global and coherent response to the crisis, and in translating it into action at the country level. At the country level, international organizations should work together to take a joint and complementary approach to the crisis;

(d) Strengthened political commitment towards the timely achievement of the Millennium Development Goals through the implementation of the

proposed joint initiatives by the United Nations system in response to the multiple, interrelated crises;

(e) A global consensus on the need to guard against protectionism and promote trade. A welcome sign of this would be a successful and balanced conclusion to the Doha Round of multilateral trade negotiations that places the needs of developing countries at its centre, and provides for complementary ongoing aid for trade measures;

(f) A successful outcome to the United Nations Climate Change Conference in December 2009 which also promotes the development aspirations of poorer countries;

(g) Enhanced cooperation at all levels to tackle issues surrounding food security, climate change and energy, including access to energy, energy diversification (including the development of renewables) and technology transfers.

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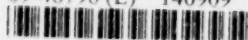
Right of peoples to self-determination

Use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly, in accordance with General Assembly resolution 63/164 and Commission on Human Rights resolution 2005/2, the report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination.

* A/64/150.



Report on the question of the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination

Summary

The Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the rights of peoples to self-determination was established in July 2005 pursuant to Commission on Human Rights resolution 2005/2. It is mandated, *inter alia*, to monitor mercenaries and mercenary-related activities in all their forms and manifestations in different parts of the world, and to study the effects on the enjoyment of human rights of the activities of private companies offering military assistance, consultancy and security services on the international market.

From April 2009, the Working Group has been headed by its Chairperson-Rapporteur, Shaista Shameem (Fiji), and its members are Najat Al-Hajjaji (Libyan Arab Jamahiriya), Amada Benavides de Pérez (Colombia), José Luis Gómez del Prado (Spain) and Alexander Nikitin (Russian Federation).

The present report is prepared in accordance with paragraph 20 of General Assembly resolution 63/164.

Section I of the report introduces its contents, section II outlines the activities undertaken by the Working Group, including its work on a possible new draft international convention on the regulation of private military and security companies. Section III presents some of the findings and conclusions of the field missions the Working Group conducted in Afghanistan and the United States of America, while section IV summarizes the second regional consultation for Eastern European and Central Asian countries held in October 2008. Section V refers to actions taken by the Working Group under the communications procedures, and section VI addresses the Working Group's future activities. Section VII contains its conclusions and recommendations.

The report contains as an annex, the status of the 1989 International Convention against the Recruitment, Use, Financing and Training of Mercenaries as at 2 July 2009, with 17 signatories and 32 State parties.

Contents

	<i>Page</i>
I. Introduction	4
II. Activities of the Working Group	7
A. Fourth to seventh sessions of the Working Group	7
B. Elaboration of a draft convention	8
C. Other activities	9
III. Country visits	10
A. Visit to Afghanistan	10
B. Visit to the United States of America	12
C. Follow-up to visits	14
D. Other missions in preparation	15
IV. Regional consultations	15
V. Communications	16
VI. Future activities	17
VII. Conclusions and recommendations	17
Annex	
Status of the International Convention against the Recruitment, Use, Financing and Training of Mercenaries as at 2 July 2009	20

I. Introduction

1. At its sixty-first session, the Commission on Human Rights, by its resolution 2005/2, decided to establish a Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination, made up of five independent experts, for an initial period of three years. From April 2009, the Working Group has been headed by its Chairperson-Rapporteur, Shaista Shameem (Fiji), and its members are Najat Al-Hajjaji (Libyan Arab Jamahiriya), Amada Benavides de Pérez (Colombia), José Luis Gómez del Prado (Spain) and Alexander Nikitin (Russian Federation). From April 2008 to the end of March 2009, Alexander Nikitin (Russian Federation) was the Chairperson-Rapporteur of the Working Group.
2. At its tenth session, the Human Rights Council requested the Working Group, in its resolution 10/11, to: (a) consult with intergovernmental, non-governmental organizations, academic institutions and experts on the content and scope of a possible draft convention on private companies offering military assistance, consultancy and other military security-related services on the international market, and an accompanying Model Law, and other legal instruments; (b) share with Member States, through the Office of the United Nations High Commissioner for Human Rights, elements for a possible draft convention on private military and security companies, request their input on the content and scope of such a convention and transmit their replies to the Working Group; (c) report to the fifteenth session of the Human Rights Council on the progress achieved in the elaboration of the draft legal for proper consideration and action. Since the adoption of the new resolution, the Working Group has concentrated its effort on drafting elements of a possible draft convention and consulted with a wide range of non-governmental organizations (NGOs), academic institutions and experts on the content and scope of this possible new legal instrument.
3. For the purposes of the present report, the Working Group refers to private military and security companies as including private companies that perform all types of security assistance, training, intelligence and other consulting services, including unarmed logistical support, armed security guards, and those involved in defensive or offensive military and/or security-type activities, particularly in situations of armed conflict.
4. Pursuant to its mandate, the Working Group has continued to monitor mercenaries, mercenary-related activities in all their forms and manifestations, as well as to study the effects of the activities of private companies offering military assistance, consultancy and security services on the international market on the enjoyment of human rights. The Working Group notes that its mandate and work have steadily evolved in the recent years to reflect the increasing worldwide attention to the growing number of private military and security companies and the wide scope of their activities as well as to the growing concern regarding a lack of transparency and accountability of these companies and their impact on the enjoyment of human rights. Despite limited reports on individual mercenaries fighting in armed conflict for profit and in some cases with the aim of overthrowing a legitimate Government, the Working Group has gathered information over the last few years on situations where private security contractors legally working in a country have been involved as individuals in illegal mercenary activity in another country. The Working Group believes that a new international legal instrument

would help to define those activities that can legally be carried out by private military and security companies according to international law from the activities that should remain essential governmental functions and could not in any circumstances be outsourced.

5. During the period of review, the Working Group held four sessions, including its seventh session, held in New York from 27 to 31 July 2009, undertook visits to Afghanistan and to the United States of America and convened a regional consultation for Eastern European and Central Asian countries on the effects of activities of private military and security companies on the enjoyment of human rights in the region and on the steps taken towards regulation and oversight. The Working Group has also sent letters of allegation to Governments regarding specific incidents and alleged human rights violations.

6. The Working Group noted that the use of private military and security companies worldwide continued to increase gradually over the last year, with up to 80 per cent of all such companies registered in the United Kingdom and the United States.¹ The majority of these companies were operating in Iraq and Afghanistan and were conducting a wide range of activities, from static security to escort of convoys, training and intelligence services.

7. Given the concentration of these companies in a handful of countries of origin/home States (States of nationality of a private military and security company, that is, where such a company is registered or incorporated, namely, the United States and the United Kingdom) or receiving countries/territorial States (States on whose territory these companies operate, namely, Iraq and Afghanistan), some argue that the phenomenon does not represent an international concern and will decline with the gradual withdrawal of the United States and other international troops from Iraq and Afghanistan. The Working Group believes that given the lucrative character of the industry, which operates in armed conflicts, post-conflict situations and troubled areas where extractive transnational corporations function, the phenomenon is likely to increase, diversify and spread to more countries. Following visits to Ecuador in 2006, and Chile, Peru and Fiji in 2007, the Working Group already reported on the recruitment of a large number of independent contractors in these countries by foreign companies contracted by the United States or the United Kingdom Governments and some of the consequences, including the lack of control by the home countries of these contractors as well as often the poor working conditions and lack of protection for these third country nationals.² The presence and activities of these companies are also growing rapidly on the African continent where some companies are, among other things, providing training of security forces in some countries. Often, contracts are settled between donor countries and private military and security companies without the possibility for national authorities and civil society being able to participate in the decision-making regarding these contracts and to play their constitutional and legitimate roles in democratic governance of the security sector.³

¹ Geneva Centre for the Democratic Control of Armed Forces, F. Schreier, M. Caparini, *Privatising security: law, practice and governance of private military and security companies*, Occasional Paper No. 6, quoted in A/HRC/10/14/Add.2.

² See the Working Group mission reports, available from http://ap.ohchr.org/documents/sdpage_e.aspx?m=152&t=9.

³ Adedeji Ebo, "Local ownership and emerging trends in SSR: a case study of outsourcing in Liberia", Timothy Donais, editor, in *Local Ownership and Security Sector Reform*, Geneva Centre for the Democratic Control of Armed Forces, 2008.

8. The Working Group is concerned by the growing trend towards privatization of military and security services and its consequences for the public. As suggested by the Human Rights Council in its resolution 7/21, the Working Group recommends a discussion at the international level on the fundamental question of the role of a State as holder of the monopoly of the legitimate use of force, with the objective of facilitating a critical understanding of the responsibilities of the different actors, including private military and security companies, and their respective obligations for the protection and promotion of human rights and in reaching a common understanding as to which additional regulation and controls are needed at the international level. In its work on a possible draft convention on the regulation of private military and security companies, the Working Group is discussing a number of elements of what they consider to be inherently governmental functions that should not under any circumstances be outsourced to non-State entities under a new legally binding instrument. Pursuant to the Human Rights Council resolution 10/11, these elements will be submitted to Member States for their consideration.

9. The Working Group remains concerned at the impact of private military and security companies on the enjoyment of human rights and, in particular, concerning accountability in case of criminal offences and human rights violations as well as access to remedy for victims of these violations. Too often proper investigations of incidents involving these companies are not launched owing to insufficient evidence or to the difficulty of investigating in zones of conflict, and due to the fact that in a situation when a lawsuit is filed, it can take years before victims obtain some form of redress. Some Governments still have special agreements with private military and security companies granting them immunity from prosecution. Situations where armed individuals are not subject to the control or the laws of the State have led to dramatic events and are unacceptable. No one can be immune from prosecution for criminal offences and human rights violations.

10. Proper vetting and background screening of personnel of employees is crucial, as was demonstrated by the recent shooting by a British contractor of colleagues from the same company, ArmorGroup, in Iraq in early August 2009. The contractor was suffering from severe post-traumatic stress and had earlier been dismissed while working in Iraq by the security firm Aegis for "extreme negligence" and was awaiting trial for assault, having already been convicted of three other crimes, including robbery, possession of ammunition and public order offences.⁴ The Working Group is also reviewing conditions of employment of third-country nationals employed by private military and security companies, and is disturbed by numerous testimonies of individual contractors, who were not provided with adequate working conditions, protection and insurances and who, in some instances, had their passports and travel documents confiscated, leaving them with no means to return home. Finally, the Working Group deplores the lack of information accessible to the public on the number of private military and security companies operating in conflict or post-conflict zones, including information on the companies, the number and nationality of personnel, casualties, number and types of weapons and vehicles as well as on the activities for which they are contracted. The Working Group calls for further transparency and information on those contracts, within legitimate limitations such as national security and privacy.

⁴ "The human timebomb: why was he given Iraq job?", *The Independent*, 14 August 2009.

11. Pursuant to General Assembly resolution 63/164, the Working Group submits its fourth report to the General Assembly, for consideration at its sixty-fourth session.

II. Activities of the Working Group

A. Fourth to seventh sessions of the Working Group

12. At its fourth session, held in New York from 2 to 5 September 2008, the Working Group held discussions with Member States, United Nations departments, including the Department of Peacekeeping Operations, the Office of Legal Affairs and the Office for Disarmament Affairs, representatives of civil society, academics and representatives of private military and security companies. In particular, the fourth session was an occasion to discuss with relevant actors the key principles for a system of international regulation of private military and security companies contracted to Governments.

13. At its fifth session, held in Geneva from 15 to 19 December 2008, the Working Group considered a number of communications and country situations, and met with representatives of the Permanent Missions of Honduras and Ecuador to discuss follow-up to the Working Group's visits to these countries. The Working Group also met with representatives of the Democratic Republic of the Congo to discuss the political and social situation in the eastern part of the country and the presence of militias and private military and security companies. The delegation welcomed the request of the Working Group to conduct a visit to the country. In addition, the Working Group held meetings with United Nations system agencies and organs, the Office of the United Nations High Commissioner for Human Rights (OHCHR), the International Committee of the Red Cross (ICRC), academics, NGOs and an association of private military and security companies.

14. From 30 March to 3 April 2009, the Working Group held its sixth session in Geneva. Ms. Shaista Shameem was elected Chairperson by consensus. In line with the request of the Human Rights Council (resolution 10/11), the Working Group devoted several meetings to discuss elements for a possible draft convention, its scope, content and structure. The Working Group also discussed its workplan regarding the process of consultation on the draft convention with NGOs, academics and experts. The Working Group met with representatives from the Swiss Foreign Affairs Department on the follow-up to the Montreux Document and discussed the Swiss Initiative for an international code of conduct for private military and security companies (see A/HRC/10/14, paras. 42-51). The complementarity of their respective initiatives was underlined and it was agreed to continue working in close cooperation, with the Working Group concentrating its work on a draft international binding legal instrument. The Working Group also met with representatives of the Western Europe and Others Group and briefed them on its mandate and current activities. The Working Group recalled the human rights violations for which private military and security companies have been responsible so far and the lack of accountability and redress for victims in the current system. They also stressed the importance of regular interaction with the Western Europe and Others Group and hoped for increased support for their mandate and activities. The Chairperson of the Western Europe and Others Group recommended that the Working Group brief them

at their next session in Geneva. Finally, the Working Group was briefed on the initiative of the United Nations Inter-Agency Security Management Network to develop a United Nations-wide policy on security and on contracting private security companies. The Working Group welcomes this initiative, which aims at defining the situations and rules regarding the hiring of armed guards as well as the type of personnel that can be recruited following rigorous vetting and training. It is crucial for the United Nations to have clear and transparent system-wide policy, guidelines, and oversight mechanisms on the use of private security contractors.

15. From 27 to 31 July, the Working Group held its seventh session in New York. A significant part of the session was devoted to discussing elements for a possible draft convention, its scope, content and structure. The Chairperson of the Working Group participated as a panellist in a policy forum on the regulation of private military and security companies, organized by the International Peace Academy. The Academy also organized a closed-door workshop for the Working Group with some 30 experts, academics and representatives of NGOs and the industry for the purpose of discussing the elements of a possible draft convention. The preliminary discussion with these experts was valuable and served to fine-tune the Working Group's work in progress on the convention. In addition, the Working Group considered a number of situations and communications and held meetings with United Nations system agencies and departments based at Headquarters in New York. It also received information on the continuing recruitment of mercenaries, including children, in the Great Lakes region of Africa and in West Africa. The Working Group will continue to monitor these allegations and study the causes and the measures taken by the concerned Governments to put an end to these activities.

B. Elaboration of a draft convention

16. With the adoption on 20 March 2009 of a new Human Rights Council resolution, by which the Working Group was requested, *inter alia*, to (a) consult with intergovernmental, non-governmental organizations, academic institutions and experts on the content and scope of a possible draft Convention on private companies offering military assistance, consultancy and other military security-related services on the international market, and an accompanying Model Law, and other legal instruments; and (b) share with Member States, through the Office of the United Nations High Commissioner for Human Rights, elements for a possible draft convention on private military and security companies, request their input on the content and scope of such convention and transmit their replies to the Working Group, the Working Group concentrated its efforts since March on discussing the content and scope and elaborating a draft of such a convention.

17. In the view of the Working Group, the purpose of the draft convention is to reaffirm and strengthen the principle of State responsibility for the legitimate use of force and to identify those functions which are, under international law, inherently governmental and cannot be outsourced to non-State entities as a matter of public interest. The draft convention also seeks to promote cooperation among States regarding licensing and regulation of the activities of private military and security companies in order to more effectively monitor and address challenges to the full implementation of human rights obligations. The draft convention devises mechanisms to ensure proper national and international oversight and monitoring of

the activities of such companies as well as to investigate reports of abuses and violations of human rights and international humanitarian law.

18. The draft text of the convention was circulated in July 2009 to some 250 experts, academics and NGOs worldwide for comments. On 29 July, the Working Group held a closed workshop with selected experts to discuss the content and scope of the draft convention. The Working Group was pleased to receive positive feedback from the NGOs and academics attending the workshop and responded to many questions and observations on the philosophy, scope and detailed elements of the draft convention. The Working Group is now in the process of consolidating the draft convention on the basis of the comments received orally or in writing and expects to circulate it to Member States in early 2010 for their input.

C. Other activities

19. The Academic Network set up in Bogota in January 2007 to study and monitor the activities of mercenaries and private military and security companies in Latin America continued its activities during the period under review. On 7 and 8 May 2009, a member of the Working Group, together with the Academic Network organized and participated as a keynote speaker in a seminar held in Bogota on the topic "Mercenaries and private military and security companies in Latin America". The seminar gathered a large participation, including members of the Colombian Senate, private military and security companies operating in Colombia, international experts and journalists. On 25 July, the Colombian Academic Network met again at the initiative of a member of the Working Group to discuss the elements of the draft convention on the regulation, oversight and monitoring of private military and security companies. Staff of OHCHR and ICRC in Colombia also attended the meeting as observers. The conclusions and recommendations were presented at the seventh session of the Working Group. Other consultations with academics and NGOs in the Latin American region are envisioned through the Academic Network.

20. The Swiss Government, together with the Geneva Centre for the Democratic Control of Armed Forces, organized a series of events on the self-regulation of private military and security companies, to which the Working Group was associated. A member of the Working Group attended two of the three workshops organized by the Centre in March and April 2009 on the topic "Working towards an international code of conduct for private military and security companies". The first workshop was aimed at the leading international private military and security companies and industry associations, the second gathered representatives of civil society and research institutions, while the third congregated representatives of Governments, regional organizations and the United Nations. The workshops aimed at identifying the elements essential to an effective international code of conduct for the security industry.

21. Two members of the Working Group also participated in a Wilton Park Conference held in Nyon, Switzerland, from 4 to 6 June. The Conference was organized by the Swiss Federal Department of Foreign Affairs, in cooperation with the Geneva Centre for the Democratic Control of Armed Forces and the Geneva Academy of International Humanitarian Law and Human Rights to discuss the initiative to establish a possible international code of conduct for private military

and security companies.⁵ It gathered representatives of major private military and security companies, industry associations in the United States, United Kingdom and South Africa, interested Governments, including those that contract such companies, international governmental and non-governmental organizations and other legal and human rights experts to discuss whether and how to codify standards for the operation of all private military and security companies in compliance with human rights and international humanitarian law. The conference also sought to examine how self-commitment by the private military and security industry can be effectively monitored and enforced.

22. The Working Group took an active part in the consultations on a possible international code of conduct for private military and security companies. The Working Group hopes that the views of the Working Group, as well as those of NGOs and experts expressed at the meetings would be fully integrated when setting up the mechanism. The Working Group believes that such an international code of conduct should be accompanied by "an independent and authoritative 'watchdog'", as recommended by some participants, which would be able to offer a trustworthy and effective complaint and redress mechanism for victims.

23. The Working Group welcomes the Swiss Initiative insofar as it represents a first step towards the regulation, oversight and monitoring of the activities of private military and security companies. The Working Group believes, nevertheless, that self-regulation is not sufficient and should be accompanied by national regulations, and an international binding instrument establishing an independent international monitoring mechanism.

24. In addition to regular press releases before and after country visits or Working Group sessions, the Working Group issued a press statement on 29 April 2009, expressing its grave concerns at reports that a group of five persons, including foreigners, were involved in a plot against the Bolivian Government. On 16 April, the Bolivian police launched an operation in the eastern city of Santa Cruz against a group that were allegedly planning assassination attempts against the democratically elected President and other senior officials of the Government. During a police operation, three individuals were killed, while two others were arrested. Communications to the Bolivian Government as well as to the countries of origin of the nationals allegedly involved in the plot were sent to seek further information regarding the incident. The Working Group would like to thank those countries that have replied to its communication. It will continue to monitor closely the situation in the Plurinational State of Bolivia, and calls upon all Governments concerned to provide the Working Group with more detailed information as the investigation into the incident proceeds.

III. Country visits

A. Visit to Afghanistan

25. A delegation of the Working Group, composed of two of its members, visited Afghanistan from 4 to 9 April 2009. Owing to the volatile security situation in the

⁵ For a full report of the Wilton Park Conference, see <http://www.wiltonpark.org.uk/themes/governance/pastconference.aspx?confref=WP979>.

country, the Working Group was only able to visit Kabul and Jalalabad, in the eastern province of Nangarhar. The Working Group considered information on the number and types of private military and security companies operating in the country as well as on the scope and extent of their activities. It focused in particular on the system of regulation of activities of private military and security companies registered in Afghanistan, the requirements for transparency and accountability of these companies and their personnel, and at instances that might have given rise to impunity of contractors for violations of human rights. The Working Group also looked at the issue of access to effective remedies for the victims of violations.

26. The comprehensive report of the mission, including its conclusions and recommendations, will be presented to the Human Rights Council at its fifteenth session. However, the present section provides an overview of its preliminary observations expressed upon the completion of the visit.

27. During the visit, the Working Group met with the Office of the President, Ministries of Foreign Affairs, Justice, Interior and Defence, as well as the chairs and members of the Committee on Legislative Affairs of the Wolesi Jirga, and the Committee on Internal Security, National Security and Local Organs of Power of the Meshrano Jirga. The Group also had the opportunity to meet with representatives of the Afghan Independent Human Rights Commission and heard the views of civil society and representatives of the private military and security companies. Meetings were also held with representatives of the international community, as well as the United Nations Assistance Mission in Afghanistan and specialized agencies. In its visit to Jalalabad, the Working Group met with the Provincial Governor and other local authorities.

28. The Working Group commended the Government of Afghanistan for the enactment of a specific regulation on national and international private security companies operating in the country. Afghanistan is among the few countries where there is specific legislation on the issue. The regulation, which was adopted in February 2008, has led to the licensing of 39 Afghan and foreign companies and the registration of their personnel and weapons. The Working Group was informed that companies which were not licensed through this process had to cease their activities accordingly or would otherwise be considered as illegal armed groups. The Government was not able to confirm whether those companies that had not obtained a licence had indeed ceased their operations in the country or if they were still operating illegally. The Working Group expressed concern at this lack of oversight and adequate sanction for those companies possibly operating illegally in some part of the country.

29. The Working Group met with several international and local NGOs. The vast majority of them stressed that the high presence of armed private guards did not generate a feeling of increased security for the Afghan population and that, to the contrary, the high number of armed individuals, vehicles and weapons created a feeling of fear and insecurity. Most NGOs pointed to the difficulty for Afghan citizens to distinguish between international troops and international or local security contractors. This, they said, complicated the process to report accurately incidents and human rights violations. The Working Group was informed about criminal offences committed by private security contractors but, despite several accounts that human rights violations had occurred, it could not obtain documented and verifiable evidence of those violations. The Working Group would recommend

the setting up of a central mechanism for individuals and private security contractors to report serious incidents involving casualties committed by private security contractors and ensure proper investigation and access for remedy for the victims.

30. During the Working Group's visit to the country, the Ministry of Justice introduced in Parliament a draft law on private security companies. The Working Group did not receive a copy of the law but understands that the language of the new law reflects the wording of the regulation. The Working Group is of the general view that legislation, which would ensure oversight and monitoring by the State of private security companies, as well as their accountability, is a positive development. The law should ensure full protection of human rights and ensure that victims enjoy an effective remedy. The Working Group recommended the speedy adoption of new legislation following a broad consultative process and adequate awareness campaign. The Government should also take all steps necessary to ensure the full implementation of the new law.

31. The Working Group reiterated the fundamental principle of the control of the State over the legitimate use of force. The State should retain control and oversight over the legal use of force, which should not be outsourced to non-State actors without exercising proper control. In that regard, the Working Group welcomed the expressed willingness of the Government of Afghanistan to gradually increase the capacity and training of the State army, police and security forces in order to ensure the safety and security of its population and of the international community present in its territory, while ensuring respect for the rule of law and human rights.

B. Visit to the United States of America

32. The Working Group recently conducted a two-week visit to the United States. The Working Group held meetings in Washington, D.C., with senior Government officials, a member of Congress and senior staff of members of Congress and Committees, academics, experts and representatives of civil society and the private security industry. It also met with several civil society organizations in New York.

33. The purpose of the visit was to obtain direct and first-hand information on the use of private military and security contractors by the United States Government abroad as well as on the governmental policy and legal framework, and the regulatory and oversight system in place to monitor the impact of the activities of private military and security companies on human rights and ensure accountability for human rights violations. In June 2009, some 240,000 private sector employees were supporting United States military operations in Iraq and Afghanistan with additional contractors working for the United States Department of State and the United States Agency for International Development.

34. The tragic events of 16 September 2007 in Nisoor Square in Baghdad, in which employees of Blackwater opened fire, killing 17 and injuring more than 20 civilians, prompted more attention to the need for oversight and accountability of private military and security companies, at both the national and international levels. On 25 September 2007, the Working Group sent an allegation letter to the United States Government on this incident (see A/HRC/10/14/Add.1).

35. The Working Group is pleased that the United States Government has since taken serious corrective actions. It welcomes the recent adoption by the United States authorities of legislation and regulations aimed at strengthening further the oversight and accountability of private military and security companies, such as Section 862 of the National Defense Authorization Act of 28 January 2008 and the Department of Defense "Interim Finale Rule" of 17 July 2009.

36. The most significant development towards the end of impunity for United States security contractors has been undoubtedly the termination of the Coalition Provisional Authority Order 17, which provided immunity to contractors contracted by the United States. The new status of forces agreement, which entered into force on 1 January 2009, provides that "members of the United States Forces and of the civilian component will respect Iraqi laws, customs, traditions and conventions".⁶ The Working Group welcomes the adoption of the new status of forces agreement, which has put an end to a situation that should have never been allowed. In carrying out their activities, private military and security companies and their personnel should be obliged to comply with international humanitarian law and human rights law and to abide by relevant national laws. The Working Group was assured by Government officials of the United States that the Government would not contract with companies whose personnel had been convicted of human rights violations or criminal offences.

37. The Working Group presented a list of preliminary recommendations at the end of its visit, including a call for the adoption of a comprehensive legislation for all contractors and civilian employees, including more transparency in contracting with companies by the intelligence agencies; the strengthening of the Department of Justice investigative resource capacity and the appointment of an independent prosecutor for prosecuting cases of human rights violations and criminal offences committed by individuals or companies contracted to the United States Government; the publication of statistical information on cases of human rights violations committed by private military and security companies that are being investigated as well as on the number of private military and security contractors injured or killed while supporting United States operations; the provision of greater transparency and freedom of information on private military and security companies operating under United States contracts; the establishment of a system of federal licensing of private military and security companies and a vetting procedure; the launching by Congress of an investigation into the use of private military and security companies for rendition flights; and, finally, ensuring the right of all victims to an effective remedy and swift access to justice in the appropriate jurisdiction.

38. The comprehensive report of the mission, including its conclusions and recommendations, will be presented to the Human Rights Council at its fifteenth session.

⁶ Agreement Between the United States of America and the Republic of Iraq on the Withdrawal of the United States Forces from Iraq and the Organization of Their Activities during Their Temporary Presence in Iraq, art. 3.

C. Follow-up to visits

39. The Working Group held meetings with representatives of the Governments of Honduras and Ecuador in December 2008 and the Government of Peru in April 2009 to discuss the follow-up to the recommendations made in its reports following its visits to these countries.

40. In April 2009, the Foreign and Commonwealth Office of the United Kingdom launched a consultation process on a governmental proposal to introduce a package of measures to improve standards in the private military and security industry in the United Kingdom and worldwide.⁷ In its document, the Government explained that it rejected the options of licensing activities or companies on the ground that, among other things, there was no suitable enforcement authority that could effectively investigate violations and that a Government-approved register of companies would be difficult to create, maintain and use effectively. The package of measures recommended by the Government combined a self-regulation initiative through the trade association with an international approach to promote higher global standards. The trade association would take the lead in drafting a code of conduct based on high national standards and would have responsibility to enforce it. The Government would use its leverage as buyer to pressure private military and security companies to adhere to and observe the code. The Government would extend international cooperation by building on the Montreux Document and advocating an extension of the initiative to create internationally agreed standards for companies. The Government would also support the establishment of an effective impartial and transparent complaint mechanism.

41. In its letter dated 15 July 2009 to the Foreign and Commonwealth Office of the United Kingdom, the Working Group welcomed this initiative of the United Kingdom Government geared towards improving standards for private military and security companies. In its report of 19 February 2009 following its visit to the United Kingdom (A/HRC/10/Add.2), the Working Group recommended to the Government to make public the results of the 2005 Review of the United Kingdom Green Paper on the regulation of private military and security companies, or to undertake a new review, and to conduct a comprehensive discussion between the concerned bodies on the options for regulation. The Working Group considers the recent consultation as a positive step in this regard.

42. While the Working Group recognizes that the self-regulatory option through the trade associations recommended by the Government envisions enforcement, monitoring and sanctions mechanisms, it regrets that the Government did not consider the legislative option as a valid option for the United Kingdom.

43. The Working Group reiterated its recommendations included in its report of the visit to the United Kingdom (*ibid.*) and specifically in paragraph 41 of the report, where it highlighted a set of basic principles, which included the identification by the Government of activities that under no circumstances could be outsourced to private military and security companies; a registration system of private military and security companies with minimum transparency requirements; a licensing system of private military and security companies that would include an

⁷ Consultation document, Foreign and Commonwealth Office, Consultation on promoting high standards of conduct by private military and security companies internationally.

adequate vetting system; an external complaint mechanism open to individuals, State agencies, foreign Governments and other companies to ensure criminal responsibility of individuals and civil liability of the companies; and a monitoring system of oversight of the activities of private military and security companies by the Parliament.

D. Other missions in preparation

44. By a letter dated 12 January 2009, the Working Group has been extended an invitation to visit the Sudan. The Working Group is currently considering possible dates for a visit to the Sudan as well as to Equatorial Guinea, whose authorities expressed their readiness to receive the Working Group. The Democratic Republic of the Congo expressed its verbal acceptance should the Working Group envision a mission in the country in 2010. The Working Group is also considering other possible country visits on the basis of the most recent information received on mercenaries or activities of private military and security companies.

IV. Regional consultations

45. The Working Group convened its second regional consultation for Eastern European and Central Asian countries from 17 to 18 October 2008, in Moscow (see A/HRC/10/14/Add.3).

46. This regional consultation was organized pursuant to paragraph 15 of General Assembly resolution 62/145, by which the Assembly expressed its appreciation to the Office of the High Commissioner for its support for convening in Panama the regional governmental consultation for Latin American and Caribbean States, and requested the Office of the High Commissioner to convene other regional governmental consultations on traditional and new forms of mercenary activities as a means of violating human rights and impeding the exercise of the right of peoples to self-determination, in particular regarding the effects of the activities of private military and security companies on the enjoyment of human rights.

47. The consultation sought to gain a regional perspective about the current practices related to mercenaries and private military and security companies registered, operating or recruiting personnel in the region. It also provided an opportunity to discuss the fundamental question of the role of the State as holder of the monopoly of the legitimate use of force and to share information on steps taken by States in the region to introduce legislation and other measures to regulate and monitor activities of private military and security companies on the international market. The participants discussed general guidelines, norms and basic principles for the regulation and oversight of the activities of private military and security companies to encourage the further protection of human rights.

48. The consultation was attended by representatives of the Governments of Armenia, Bosnia and Herzegovina, Kyrgyzstan, Lithuania, Poland, the Republic of Moldova, the Russian Federation, Serbia, Slovenia, Tajikistan and Ukraine. Also attending were representatives from the Collective Security Treaty Organization, ICRC, the United Nations and civil society, academics and a representative from a private military and security company.

49. The Working Group observed that the private military and security industry was expanding globally, and underlined that the rapid rate of this growth had shifted the discussion from whether non-State actors should be allowed to use force to how they should use such force. In accordance with General Assembly resolution 62/145, the Working Group stated its belief that it was essential to actively pursue the debate on the fundamental question on the role of the State as holder of the monopoly of the legitimate use of force.

50. The Working Group reiterated its conclusion that legal codification of the comprehensive system of oversight and regulation for the private military and security industry should be based upon certain identified principles presented in the previous report to the General Assembly (A/63/325, para. 90). The Working Group also stressed the importance of developing an effective system for the licensing of the private military and security industry and the training of its employees as well as an effective vetting system for the selection of employees of private military and security companies. The Working Group presented its view of a comprehensive regulatory framework that would include international and regional binding agreements containing internal petitionary or complaints mechanisms, national legislation and policy, parliamentary control and oversight, self-regulation by the industry itself and independent monitoring by civil society institutions.

51. The draft text of a possible convention on regulating private military and security companies prepared by Russian experts as well as the findings of a model law project⁸ by the School of Law at the University of Wisconsin-Madison were presented to the participants.

52. The Working Group plans to hold regional consultations for the Asia region in October 2009 and for Africa and Western Europe in 2010 to discuss the impact of traditional forms of mercenary activities as well as activities of private military and security companies on the enjoyment of human rights. The Working Group thanks the Governments of Thailand and Spain for offering to host these consultations.

V. Communications

53. The Working Group continues to receive information from Governments, NGOs and individuals concerning situations involving mercenaries, mercenary-related activities as well as allegations of human rights violations by private military and security companies. During the year under review, communications were sent to the Plurinational State of Bolivia, Croatia, Hungary, Israel, Ireland, Peru and Romania. The Working Group would like to thank the Governments of the Plurinational State of Bolivia, Hungary, Croatia, Romania and Ireland for their prompt replies to its communications. The communications and summaries of responses received from Governments will be reflected in the report of the Working Group to the Human Rights Council at its fifteenth session.

54. The Working Group reiterates its interest in receiving responses from the Governments concerned in regard to allegations submitted and considers response to its communications as an important part of the cooperation of Governments with its mandate.

⁸ *Wisconsin International Law Journal*, Vol. 26, No. 4, pp. 1078-1094.

VI. Future activities

55. The United Nations Working Group will continue its efforts towards building consensus for a possible international draft convention on private military and security companies. The Working Group began its consultations with intergovernmental and non-governmental organizations, academic institutions and experts in July. To this date, the Working Group has sent the draft convention for consultation to some 250 experts.

56. From September to December 2009, the Working Group will review comments from intergovernmental, NGOs, academic institutions and experts and will adapt and consolidate its draft convention accordingly. In accordance with paragraph 13 (b) of Human Rights Council resolution 10/11, the Working Group will subsequently share with Member States, through the Office of the United Nations High Commissioner for Human Rights, elements for a possible draft convention on private military and security companies, requesting their input on the content and scope of such a convention and to transmit their replies to the Working Group. The Council requested the Working Group to report to it at its fifteenth session on the progress achieved in the elaboration of the draft legal instrument for proper consideration and action.

57. The Working Group will also pursue its efforts to elaborate an accompanying Model Law that would assist countries that are engaged in drafting national legislation on the regulation of private military and security companies.

58. In addition and pursuant to Human Rights Council resolution 7/21, from 26 to 28 October 2009, the Working Group will convene a regional consultation for Asia in Bangkok on the topic "Traditional and new forms of mercenary activities as a means of violating human rights and impeding the exercise of the right of peoples to self-determination, in particular regarding the effects of the activities of private military and security companies on the enjoyment of human rights". The Working Group would like to thank the Government of Thailand for hosting this regional consultation.

59. The Working Group will also pursue its preparation for the regional consultation for Africa. From 13 to 15 October 2010, the last regional consultation will be held in Madrid for the Western European and Others Group. The Working Group would like to express its gratitude to the Government of Spain for hosting the regional consultations for Western Europe.

60. The Working Group will pursue consultations with Member States to promote the widest ratification and accession of States to the 1989 International Convention against the Recruitment, Use, Financing and Training of Mercenaries.

VII. Conclusions and recommendations

61. The Working Group recommends that the approach of the international community to private military and security companies should imply greater State responsibility for the activities of private military and security companies worldwide, including responsibility for where and how they operate and their impact on the full enjoyment of human rights. Governments should devise national and international mechanisms to monitor abuses and violations of

human rights and international humanitarian law and ensure that victims have access to appropriate remedies. The Working Group also urges Governments to end all existing agreements that confer immunity from prosecution for criminal offences and human rights violations to private military and security companies.

62. In addition to monitoring mechanisms, a complaint mechanism open to individuals, State agencies, foreign Governments and other companies and entities should be established to provide an avenue for victims to be heard and a means to request information from the concerned Government and, where necessary, seeking preventive, investigatory or remedial action. The Working Group believes that, in addition to complaint mechanisms at the national level, the international community should set up an international independent complaints procedure. The Working Group envisioned such a mechanism in its draft convention.

63. The Working Group welcomes the ongoing debate in some countries, notably in the United States, on the definition of what constitutes inherently governmental functions that under no circumstances could be outsourced by the State to the private sector. The Working Group believes that there are certain functions, including participation in direct hostilities, the handling and detainment of prisoners of war, civilian internees, terrorists, and others defined under international humanitarian law, the direction and control of intelligence interrogations and intelligence gathering and analysis as well as certain law enforcement functions that cannot, under international law, be outsourced. National legislation on the private military and security industry should clearly specify the types of activities prohibited for nationally registered companies, including mercenary-related activities or participating in overthrowing legitimate Governments and political authorities; both of these activities are banned by the International Convention against the Recruitment, Use, Financing and Training of Mercenaries. The Working Group is proposing a definition of fundamental State functions that cannot be outsourced, in its draft convention for consideration by Member States.

64. The Working Group is concerned by the lack of effective parliamentary and public scrutiny on the scope and type of contracts allocated to private military and security companies, given the lack of transparency on the type of contractual arrangements between Governments and private military and security companies. The Working Group calls for further transparency and freedom of information on the number of such companies operating in conflict or post-conflict zones, information on the companies, number and nationality of personnel, casualties, number and types of weapons and vehicles as well as on the activities for which they are contracted, to be provided pursuant to legitimate limitations posed by national security and privacy.

65. In line with the mandate it has been given by both the General Assembly and Human Rights Council to make recommendations regarding the creation of new legal instruments to fill the gaps in existing legislation, the Working Group has prepared a draft of a possible new international convention on the regulation, oversight and monitoring of private military and security companies referred to above. Pursuant to paragraph 13 (b) of Human Rights Council resolution 10/11, the Working Group will share with Member States,

through the Office of the United Nations High Commissioner for Human Rights, this draft convention, requesting their input on the content and scope of such a convention. The Working Group expects to disseminate the draft convention in the first trimester of 2010 to all States Members of the United Nations and invites them to provide their input on the content and scope of such a convention.

66. The Working Group notes with appreciation that over the course of 2008, two additional States became party to the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, bringing the total number of States parties to 32. The Working Group commends the Governments of Honduras and of the Syrian Arab Republic for their ratification and reiterates its appeal to all Member States to ratify the Convention, as it remains an important international legal instrument for the prevention of the use of mercenaries as a means of violating human rights and the rights of people to self-determination.

67. The Working Group expresses its appreciation to all Member States, departments, programmes, bodies and agencies of the United Nations, including experts and non-governmental organizations, which assisted it in the fulfilment of its mandate.

Annex

Status of the International Convention against the Recruitment, Use, Financing and Training of Mercenaries as at 2 July 2009

The International Convention against the recruitment, use, financing and training of mercenaries was adopted by the General Assembly in its resolution 44/34 on 4 December 1989, and entered into force on 20 October 2001.^a The status of the 1989 International Convention as at 2 July 2009, with 17 signatories and 32 State parties, is presented below. Reservations are not reflected in the present annex.

<i>State</i>	<i>Signature, succession to signature (a)</i>	<i>Ratification, accession (b)</i>
Angola	28 December 1990	
Azerbaijan		4 December 1997 ^b
Barbados		10 July 1992 ^b
Belarus	13 December 1990	28 May 1997
Belgium		31 May 2002 ^b
Cameroon	21 December 1990	26 January 1996
Congo	20 June 1990	
Costa Rica		20 September 2001 ^b
Croatia		27 March 2000 ^b
Cuba		9 February 2007 ^b
Cyprus		8 July 1993 ^b
Democratic Republic of the Congo	20 March 1990	
Georgia		8 June 1995 ^b
Germany	20 December 1990	
Guinea		18 July 2003 ^b
Honduras		1 April 2008 ^b
Italy	5 February 1990	21 August 1995
Liberia		16 September 2005 ^b
Libyan Arab Jamahiriya		22 September 2000 ^b
Maldives	17 July 1990	11 September 1991

^a Available from <http://treaties.un.org> (accessed on 2 July 2009).

<i>State</i>	<i>Signature, succession to signature (a)</i>	<i>Ratification, accession (b)</i>
Mali		12 April 2002 ^b
Mauritania		9 February 1998 ^b
Montenegro	23 October 2006 ^a	
Morocco	5 October 1990	
New Zealand		22 September 2004 ^b
Nigeria	4 April 1990	
Peru		23 March 2007 ^b
Poland	28 December 1990	
Qatar		26 March 1999 ^b
Republic of Moldova		28 February 2006 ^b
Romania	17 December 1990	
Saudi Arabia		14 April 1997 ^b
Senegal		9 June 1999 ^b
Serbia	12 March 2001 ^a	
Seychelles		12 March 1990 ^b
Suriname	27 February 1990	10 August 1990
Syrian Arab Republic		23 October 2008 ^b
Togo		25 February 1991 ^b
Turkmenistan		18 September 1996 ^b
Ukraine	21 September 1990	13 September 1993
Uruguay	20 November 1990	14 July 1999
Uzbekistan		19 January 1998 ^b